

Aug 20, 2018

SEAN F. MCAVOY, CLERK

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON**

RAY E.,

Plaintiff,

vs.

COMMISSIONER OF SOCIAL

SECURITY,

Defendant.

No. 1:17-cv-03113-MKD

ORDER GRANTING PLAINTIFF'S
MOTION FOR SUMMARY
JUDGMENT AND DENYING
DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT

ECF Nos. 15, 23

BEFORE THE COURT are the parties' cross-motions for Summary Judgment. ECF Nos. 15, 23. The parties consented to proceed before a magistrate judge. ECF No. 8. The Court, having reviewed the administrative record and the parties' briefing, is fully informed. For the reasons discussed below, the Court grants Plaintiff's Motion (ECF No. 15) and denies Defendant's Motion (ECF No. 23).

1 F.3d 1104, 1111 (9th Cir. 2012). Further, a district court “may not reverse an
2 ALJ’s decision on account of an error that is harmless.” *Id.* An error is harmless
3 “where it is inconsequential to the [ALJ’s] ultimate nondisability determination.”
4 *Id.* at 1115 (quotation and citation omitted). The party appealing the ALJ’s
5 decision generally bears the burden of establishing that it was harmed. *Shinseki v.*
6 *Sanders*, 556 U.S. 396, 409-10 (2009).

7 **FIVE-STEP EVALUATION PROCESS**

8 A claimant must satisfy two conditions to be considered “disabled” within
9 the meaning of the Social Security Act. First, the claimant must be “unable to
10 engage in any substantial gainful activity by reason of any medically determinable
11 physical or mental impairment which can be expected to result in death or which
12 has lasted or can be expected to last for a continuous period of not less than twelve
13 months.” 42 U.S.C. §§ 423(d)(1)(A); 1382c(a)(3)(A). Second, the claimant’s
14 impairment must be “of such severity that he is not only unable to do his previous
15 work[,] but cannot, considering his age, education, and work experience, engage in
16 any other kind of substantial gainful work which exists in the national economy.”
17 42 U.S.C. §§ 423(d)(2)(A); 1382c(a)(3)(B).

18 The Commissioner has established a five-step sequential analysis to
19 determine whether a claimant satisfies the above criteria. *See* 20 C.F.R. §§
20 404.1520(a)(4)(i)-(v); 416.920(a)(4)(i)-(v). At step one, the Commissioner

1 considers the claimant's work activity. 20 C.F.R. §§ 404.1520(a)(4)(i);
2 416.920(a)(4)(i). If the claimant is engaged in "substantial gainful activity," the
3 Commissioner must find that the claimant is not disabled. 20 C.F.R. §§
4 404.1520(b); 416.920(b).

5 If the claimant is not engaged in substantial gainful activity, the analysis
6 proceeds to step two. At this step, the Commissioner considers the severity of the
7 claimant's impairment. 20 C.F.R. §§ 404.1520(a)(4)(ii); 416.920(a)(4)(ii). If the
8 claimant suffers from "any impairment or combination of impairments which
9 significantly limits [his or her] physical or mental ability to do basic work
10 activities," the analysis proceeds to step three. 20 C.F.R. §§ 404.1520(c);
11 416.920(c). If the claimant's impairment does not satisfy this severity threshold,
12 however, the Commissioner must find that the claimant is not disabled. 20 C.F.R.
13 §§ 404.1520(c); 416.920(c).

14 At step three, the Commissioner compares the claimant's impairment to
15 severe impairments recognized by the Commissioner to be so severe as to preclude
16 a person from engaging in substantial gainful activity. 20 C.F.R. §§
17 404.1520(a)(4)(iii); 416.920(a)(4)(iii). If the impairment is as severe or more
18 severe than one of the enumerated impairments, the Commissioner must find the
19 claimant disabled and award benefits. 20 C.F.R. §§ 404.1520(d); 416.920(d).

1 If the severity of the claimant's impairment does not meet or exceed the
2 severity of the enumerated impairments, the Commissioner must pause to assess
3 the claimant's "residual functional capacity." Residual functional capacity (RFC),
4 defined generally as the claimant's ability to perform physical and mental work
5 activities on a sustained basis despite his or her limitations, 20 C.F.R. §§
6 404.1545(a)(1); 416.945(a)(1), is relevant to both the fourth and fifth steps of the
7 analysis.

8 At step four, the Commissioner considers whether, in view of the claimant's
9 RFC, the claimant is capable of performing work that he or she has performed in
10 the past (past relevant work). 20 C.F.R. §§ 404.1520(a)(4)(iv); 416.920(a)(4)(iv).
11 If the claimant is capable of performing past relevant work, the Commissioner
12 must find that the claimant is not disabled. 20 C.F.R. §§ 404.1520(f); 416.920(f).
13 If the claimant is incapable of performing such work, the analysis proceeds to step
14 five.

15 At step five, the Commissioner considers whether, in view of the claimant's
16 RFC, the claimant is capable of performing other work in the national economy.
17 20 C.F.R. §§ 404.1520(a)(4)(v); 416.920(a)(4)(v). In making this determination,
18 the Commissioner must also consider vocational factors such as the claimant's age,
19 education and past work experience. 20 C.F.R. §§ 404.1520(a)(4)(v);
20 416.920(a)(4)(v). If the claimant is capable of adjusting to other work, the

Commissioner must find that the claimant is not disabled. 20 C.F.R. §§ 404.1520(g)(1); 416.920(g)(1). If the claimant is not capable of adjusting to other work, analysis concludes with a finding that the claimant is disabled and is therefore entitled to benefits. 20 C.F.R. §§ 404.1520(g)(1); 416.920(g)(1).

The claimant bears the burden of proof at steps one through four above. *Tackett v. Apfel*, 180 F.3d 1094, 1098 (9th Cir. 1999). If the analysis proceeds to step five, the burden shifts to the Commissioner to establish that (1) the claimant is capable of performing other work; and (2) such work “exists in significant numbers in the national economy.” 20 C.F.R. §§ 404.1560(c)(2); 416.960(c)(2); *Beltran v. Astrue*, 700 F.3d 386, 389 (9th Cir. 2012).

ALJ’S FINDINGS

On August 14, 2013, Plaintiff filed applications for Title II disability insurance benefits and Title XVI supplemental security income benefits, alleging an amended onset date of April 1, 2013. Tr. 47-48, 241-55. The applications were denied initially, Tr. 172-80, and again on reconsideration, Tr. 182-93. Plaintiff appeared at a hearing before an administrative law judge (ALJ) on September 22, 2015. Tr. 38-87. On March 1, 2016, the ALJ denied Plaintiff’s claim. Tr. 18-32.

At step one of the sequential evaluation process, the ALJ found Plaintiff has not engaged in substantial gainful activity since April 1, 2013. Tr. 21. At step two, the ALJ found Plaintiff has the following severe impairments: right shoulder

1 bursitis and joint arthrosis, degenerative joint disease of the right hip, degenerative
2 disk disease of the lumbar spine, bilateral carpal tunnel syndrome, chronic pain
3 syndrome, and depressive disorder. *Id.* At step three, the ALJ found Plaintiff does
4 not have an impairment or combination of impairments that meets or medically
5 equals the severity of a listed impairment. Tr. 22. The ALJ then concluded that
6 Plaintiff has the RFC to perform light work with the following limitations:

7 [H]e cannot work above shoulder-level with his right upper extremity. He
8 can otherwise frequently reach with his right upper extremity. He can
9 frequently handle and finger bilaterally. He cannot crawl or climb. He can
10 occasionally balance, stoop, kneel, and crouch. He should avoid
11 concentrated exposure to vibration, extreme cold, and hazards. He can
12 perform simple, routine tasks and can follow short, simple instructions. He
13 can do work that needs little or no judgment and can perform simple duties
14 that can be learned on the job in a short period. He requires a work
15 environment with minimal supervisor contact [footnote omitted]. He can
16 work in proximity to coworkers but not in a cooperative or team effort. He
17 requires a work environment without public contact and that has no more
18 than superficial interactions with co-workers.

19 Tr. 24.

20 At step four, the ALJ found Plaintiff is unable to perform any past relevant
work. Tr. 30. At step five, the ALJ found there are jobs that exist in significant
numbers in the national economy that Plaintiff can perform, such as production
assembler, hand packager, mail clerk, assembler, and document preparer. Tr. 31-
32. The ALJ concluded was not under a disability, as defined in the Social
Security Act, from April 1, 2013 through March 1, 2016, the date of the ALJ's
decision. Tr. 32.

1 On May 2, 2017, the Appeals Council denied review of the ALJ's decision,
2 Tr. 1-7, making the ALJ's decision the Commissioner's final decision for purposes
3 of judicial review. *See* 42 U.S.C. § 1383(c)(3).

4 ISSUES

5 Plaintiff seeks judicial review of the Commissioner's final decision denying
6 him disability insurance benefits under Title II and supplemental security income
7 benefits under Title XVI of the Social Security Act. Plaintiff raises the following
8 issues for review:

- 9 1. Whether the ALJ properly evaluated the medical opinion evidence; and
- 10 2. Whether the ALJ properly evaluated Plaintiff's symptom complaints.

11 ECF No. 15 at 7.

12 DISCUSSION

13 A. Medical Opinion Evidence

14 Plaintiff challenges the ALJ's treatment of the medical opinions of treating
15 and examining providers David Lindgren, M.D., Rory Sumners, M.D., and
16 Jeremiah Crank, M.D. ECF No. 15 at 19-20.

17 There are three types of physicians: "(1) those who treat the claimant
18 (treating physicians); (2) those who examine but do not treat the claimant
19 (examining physicians); and (3) those who neither examine nor treat the claimant
20 [but who review the claimant's file] (nonexamining [or reviewing] physicians)."

1 *Holohan v. Massanari*, 246 F.3d 1195, 1201-02 (9th Cir. 2001) (citations omitted).

2 Generally, a treating physician's opinion carries more weight than an examining
3 physician's, and an examining physician's opinion carries more weight than a
4 reviewing physician's. *Id.* at 1202. "In addition, the regulations give more weight
5 to opinions that are explained than to those that are not, and to the opinions of
6 specialists concerning matters relating to their specialty over that of
7 nonspecialists." *Id.* (citations omitted).

8 If a treating or examining physician's opinion is uncontradicted, the ALJ
9 may reject it only by offering "clear and convincing reasons that are supported by
10 substantial evidence." *Bayliss v. Barnhart*, 427 F.3d 1211, 1216 (9th Cir. 2005).
11 "However, the ALJ need not accept the opinion of any physician, including a
12 treating physician, if that opinion is brief, conclusory and inadequately supported
13 by clinical findings." *Bray v. Comm'r of Soc. Sec. Admin.*, 554 F.3d 1219, 1228
14 (9th Cir. 2009) (internal quotation marks and brackets omitted). "If a treating or
15 examining doctor's opinion is contradicted by another doctor's opinion, an ALJ
16 may only reject it by providing specific and legitimate reasons that are supported
17 by substantial evidence." *Bayliss*, 427 F.3d at 1216 (citing *Lester v. Chater*, 81
18 F.3d 821, 830-831 (9th Cir. 1995)).

1 *1. Dr. Lindgren*

2 Dr. Lindgren, Plaintiff's treating physician, opined on March 26, 2015 that
3 Plaintiff's carpal tunnel syndrome would cause marked impairments in Plaintiff's
4 ability to lift, carry, handle, push, and pull; that Plaintiff's intervertebral disc
5 disease would cause marked impairments in Plaintiff's ability to sit, stand, walk,
6 lift, carry, handle, push, pull, reach, stoop, and crouch; that Plaintiff's right hip
7 impairment would cause marked impairments in Plaintiff's ability to sit, stand,
8 walk, lift, carry, handle, push, pull, reach, stoop, and crouch; that Plaintiff's right
9 shoulder impairment would case marked impairments in Plaintiff's ability to sit,
10 stand, walk, lift, carry, handle, push, pull, reach, stoop, and crouch; and that
11 Plaintiff was unable to meet the demands of sedentary work. Tr. 609-10. On July
12 23, 2015, Dr. Lindgren opined Plaintiff would likely miss four or more days of
13 work per month due to his pain symptoms. Tr. 614-15. The ALJ gave these
14 opinions minimal weight. Tr. 28. Because Dr. Lindgren's opinions were
15 contradicted by Dr. Hale, Tr. 143-44, the ALJ was required to provide specific and
16 legitimate reasons for rejecting the opinion. *Bayliss*, 427 F.3d at 1216.

17 *a. Ability to Work with Impairments*

18 The ALJ found Dr. Lindgren's opinion was inconsistent with Plaintiff's past
19 ability to engage in gainful work. Tr. 28. Working with an impairment supports a
20 conclusion that the impairment is not disabling. *See Drouin v. Sullivan*, 966 F.2d

1 1255, 1258 (9th Cir. 1992). Here, the ALJ noted that Plaintiff attributed his
2 impairments to injuries that occurred several years before the alleged onset date in
3 2013. Tr. 25. Plaintiff attributed his back and hip pain to a fall that occurred in
4 2000. *See* Tr. 355, 458, 557. Plaintiff also attributed his right shoulder pain to a
5 fall that occurred in 2009. Tr. 625. The ALJ then observed that despite Plaintiff's
6 injuries in 1999 and 2009, Plaintiff was gainfully employed¹ in 2003, 2004, 2008,
7 2010, and 2011.² Tr. 25; *see* Tr. 260.

8 The ALJ concluded that because Plaintiff was capable of working after his
9 impairment-causing fall, Plaintiff was therefore capable of working with similar
10 impairments during the relevant period in this case. Tr. 25. However, the ALJ
11 identified no comparative evidence from before Plaintiff's alleged onset date to
12 support the ALJ's finding that Plaintiff's physical condition during the time when
13 he was capable of gainful employment was sufficiently similar to his physical
14 condition during the alleged period of disability to support this comparison. *See*

16 ¹ The vocational expert testified that Plaintiff's past work was classified as
17 sedentary, light, and medium work as it was performed. Tr. 75.

18 ² Plaintiff has a prior unfavorable disability determination that covers a period
19 through March 14, 2012. Tr. 18. The beginning date of this period is not in the
20 present record.

Tr. 22-30. The Commissioner does not now identify any evidence to support this conclusion. ECF No. 23 at 5-6. To the contrary, Plaintiff contends his impairments worsened over time, which is supported by the record. Here, the record shows Plaintiff pursued increasingly intensive treatment with little relief during the relevant period, indicating that Plaintiff's condition worsened with time. *See, e.g.*, Tr. 397 (Plaintiff referred to orthopedic specialist for hip pain in October 2013); Tr. 373 (on December 5, 2013, Plaintiff reported physical therapy aggravated his hip pain and that his pain increased after receiving pain-relieving injections); Tr. 523 (Plaintiff referred for surgery on April 8, 2014); Tr. 417-18 (Plaintiff underwent hip surgery on September 3, 2014); Tr. 414 (Plaintiff reported he continued to experience hip pain after surgery in September 2014); Tr. 632 (Plaintiff's response to hip surgery characterized as "without significant improvement" in June 2015). Additionally, Plaintiff's self-reports during this period indicated Plaintiff experienced worsened pain over time.³ *See* Tr. 437 (on

³ The ALJ found Plaintiff's subjective symptom complaints were "not entirely credible." Tr. 25. However, as discussed *infra*, the ALJ's evaluation of Plaintiff's symptom testimony is not supported by substantial evidence, as it was based in significant part on the ALJ's selective interpretation of the longitudinal medical

1 April 17, 2013, Plaintiff complained of “chronic right hip pain for years, worse
2 lately”); Tr. 373 (on December 5, 2013, Plaintiff reported “intermittent issues with
3 the right hip and leg [due to a fall 13 years ago] but these have gotten significantly
4 worse over the last several months”); Tr. 513 (on October 23, 2014, Plaintiff
5 reported progressively worsening right shoulder pain and weakness); Tr. 625 (on
6 April 8, 2015, Plaintiff reported right shoulder pain with an onset date of six years
7 ago, but reported recent worsening pain); Tr. 628 (May 14, 2015 follow up
8 physical therapy appointment showed marked worsening in shoulder impairment).
9 Although the ALJ concluded that there was no evidence to show Plaintiff’s
10 condition worsened between the time when Plaintiff was capable of working and
11 the time after the alleged onset date, this finding was not supported by substantial
12 evidence. Without supporting evidence, Plaintiff’s ability to work between 2003
13 and 2011 does not bear on the relevant period of disability in this case.
14 Accordingly, in this instance, Plaintiff’s past ability to work did not provide a
15 specific and legitimate reason, supported by substantial evidence, to discredit Dr.
16 Lindgren’s opinion.

17
18
19 evidence. Tr. 25-27. Accordingly, the Court declines to similarly discredit
20 Plaintiff’s symptom testimony here.

1 ***b. Consistency with Examination Findings***

2 The ALJ found Dr. Lindgren’s opinion was inconsistent with Plaintiff’s
3 physical examination findings. Tr. 28-29. Relevant factors to evaluating any
4 medical opinion include the amount of relevant evidence that supports the opinion,
5 the quality of the explanation provided in the opinion, and the consistency of the
6 medical opinion with the record as a whole. *Lingenfelter v. Astrue*, 504 F.3d 1028,
7 1042 (9th Cir. 2007); *Orn v. Astrue*, 495 F.3d 625, 631 (9th Cir. 2007). The ALJ
8 concluded that Dr. Lindgren’s opinions were inconsistent with the longitudinal
9 record of Plaintiff’s physical examination findings of his hip, back, shoulder, and
10 wrists. Tr. 28-29. The ALJ found Plaintiff’s examination findings did not
11 “indicate any significant worsening of his physical functioning in recent years” and
12 showed a “generally normal range of motion.” Tr. 25-26. However, an ALJ must
13 consider all of the relevant evidence in the record and may not point to only those
14 portions of the records that bolster his findings. *See, e.g., Holohan*, 246 F.3d at
15 1207–08 (holding that an ALJ cannot selectively rely on some entries in plaintiff’s
16 records while ignoring others). The ALJ is not permitted to “cherry pick” from
17 mixed evidence to support a denial of benefits. *Garrison v. Colvin*, 759 F.3d 995,
18 1017 n.23 (9th Cir. 2014). As discussed *infra*, the ALJ cited portions of the record
19 showing milder examination findings while the longitudinal record showed more
20

1 mixed results, leading to a characterization of the medical evidence as a whole that
2 is not supported by substantial evidence.

3 The ALJ identified several pieces of evidence regarding Plaintiff's hip that
4 the ALJ characterized as showing no "significant worsening of his physical
5 functioning in recent years." Tr. 25-26 (citing Tr. 367, 375, 409, 422, 497, 557);
6 Tr. 28. Although the ALJ identified examination notes that the ALJ characterized
7 as showing improvement or mild results, a review of the record as a whole reveals
8 substantial evidence that Plaintiff's functioning was worsening. For example, the
9 ALJ identified Plaintiff's full hip strength and 100 degrees of flexion in Plaintiff's
10 right hip in a December 5, 2013, physical therapy examination note as evidence
11 that Plaintiff's hip impairment was less severe than alleged. Tr. 25 (citing Tr. 373-
12 76). However, the same examination also showed a positive log roll test, positive
13 McCarthy test, positive FADIR test, positive posterior impingement hip test,
14 positive FABER test, and a pain response to hip circumduction. Tr. 376. The ALJ
15 similarly identified Plaintiff's exhibition of 100 degrees of flexion in his right hip
16 during a May 13, 2014, examination as evidence that Plaintiff's hip function was
17 greater than alleged. Tr. 25 (citing Tr. 557-59). However, a review of the entire
18 chart note indicates that Plaintiff's physical examination yielded positive pain
19 responses to physical examination, a positive log roll test, positive scour test, and
20 positive FABER test. Tr. 558-59. The ALJ again selectively identified Plaintiff's

1 increased hip strength during an August 7, 2014, examination, although the same
2 examination also showed positive pain responses, positive log roll test, positive
3 scour test, and positive FABER test. Tr. 25 (citing Tr. 553-56). The ALJ's
4 characterization of Plaintiff's physical examination results regarding his hip is not
5 supported by substantial evidence.

6 The ALJ similarly cherry-picked evidence of Plaintiff's back and shoulder
7 impairments, which the ALJ characterized as not indicating "any significant
8 worsening" and demonstrating "generally normal range of motion." Tr. 25-26.
9 The ALJ cited to one examination report where Plaintiff exhibited a normal range
10 of motion in his back. Tr. 26 (citing Tr. 617). However, the longitudinal record of
11 back pain evidence also contains an examination report documenting decreased
12 range of motion in Plaintiff's back. Tr. 611-13. In discussing Plaintiff's shoulder
13 impairments, the ALJ cited to an April 8, 2015 examination note showing 170
14 degrees flexion in the right shoulder and normal upper extremity strength as
15 evidence that Plaintiff's shoulder impairment cause no more than "minimal
16 deficits." Tr. 26 (citing Tr. 625-26). While the ALJ did acknowledge that this
17 examination note documented rotator cuff laxity, the examination note also
18 mentioned Plaintiff also exhibited a positive Hawkins test and positive Neer's test.
19 Tr. 625. The ALJ's selectively discussed the medical evidence. The Court's
20

1 independent review of the record as a whole reveals that the ALJ's characterization
2 of the medical evidence is not supported by substantial evidence.

3 The ALJ discredited Dr. Lindgren's opinion as being inconsistent with
4 Plaintiff's longitudinal treatment record and examination findings, which the ALJ
5 characterized as "mild," "normal," and "showing improvement." Tr. 25-26, 28.
6 However, the ALJ's characterization of the record is not supported by substantial
7 evidence. Accordingly, inconsistencies between Dr. Lindgren's opinion and the
8 ALJ's characterization of the longitudinal medical evidences does not provide a
9 specific and legitimate reason to discredit Dr. Lindgren's opinion.

10 *c. Daily Activities*

11 The ALJ found Dr. Lindgren's opinion was inconsistent with Plaintiff's
12 ability to care for his young daughter. Tr. 28-29. An ALJ may discount a medical
13 source opinion to the extent it conflicts with the claimant's daily activities.
14 *Morgan v. Comm'r of Soc. Sec. Admin.*, 169 F.3d 595, 601-02 (9th Cir. 1999). The
15 ability to care for young children without help has been considered an activity that
16 may undermine claims of totally disabling pain. *Rollins v. Massanari*, 261 F.3d
17 853, 857 (9th Cir. 2001). However, the Ninth Circuit has recently clarified that an
18 ALJ must make specific findings before relying on childcare as an activity
19 inconsistent with disabling limitations. *Trevizo v. Berryhill*, 862 F.3d 987, 998
20 (9th Cir. 2017).

1 Here, the ALJ concluded that Plaintiff's reports of "being a single father to a
2 young child" were inconsistent with the level of impairment Dr. Lindgren opined.
3 Tr. 28-29. Plaintiff testified that he did not have custody of his daughter and that
4 he had visitation with her for four hours per week. Tr. 57-58; *see also* Tr. 357.
5 The ALJ observed Plaintiff "stated that he occasionally cared for his daughter, with
6 whom he would read and play games." Tr. 27. However, the ALJ failed to explain
7 how Plaintiff's ability to occasionally read and play games with his daughter for a
8 period of up to four hours per week was inconsistent with the physical limitations
9 Dr. Lindgren opined. Without further explanation of how this limited activity was
10 inconsistent with the level of impairment Dr. Lindgren opined, the ALJ's finding is
11 not supported by substantial evidence.

12 *d. Response to Treatment*

13 The ALJ found Dr. Lindgren's opinion was inconsistent with Plaintiff's
14 response to treatment. Tr. 28. A medical opinion may be rejected if it is
15 unsupported by medical findings. *Bray*, 554 F.3d at 1228; *Batson v. Comm'r of*
16 *Soc. Sec. Admin.*, 359 F.3d 1190, 1195 (9th Cir. 2004); *Thomas v. Barnhart*, 278
17 F.3d 947, 957 (9th Cir. 2002); *Tonapetyan v. Halter*, 242 F.3d 1144, 1149 (9th Cir.
18 2001); *Matney v. Sullivan*, 981 F.2d 1016, 1019 (9th Cir.1992). The ALJ
19 identified several instances where the record showed Plaintiff's symptoms showed
20 a positive response to treatment interventions. Tr. 25-27; *see* Tr. 552 (Plaintiff

1 reported increased strength in his right hip after physical therapy); Tr. 557
2 (Plaintiff reported cortisone injection “significantly helped his pain”); Tr. 568
3 (Plaintiff showed improvement in right hip range of motion after one month of
4 physical therapy); Tr. 626 (Plaintiff reported 85% improvement in shoulder pain
5 after a cortisone injection). Plaintiff fails to challenge this finding specifically.
6 ECF No. 15 at 8-11, 19-20. Thus, any challenge to those findings is waived.⁴ *See*
7 *Carmickle v. Comm’r, Soc. Sec. Admin.*, 533 F.3d 1155, 1161 n.2 (9th Cir. 2008);
8 *Kim v. Kang*, 154 F.3d 996, 1000 (9th Cir. 1998).

9 Overall, the ALJ’s evaluation of Dr. Lindgren’s opinion is not supported by
10 substantial evidence. The Court remands this case for the ALJ to reconsider the
11 medical opinion evidence.

15 ⁴ Although the Court notes on independent review of the record that evidence
16 shows some of Plaintiff’s treatments were not effective over time. *See, e.g.*, Tr.
17 373 (hip pain aggravated by physical therapy and worsened following hip
18 injection); Tr. 505 (shoulder pain aggravated by physical therapy); Tr. 629 (pain
19 relief from shoulder injection lasted only a few hours); Tr. 632 (Plaintiff’s hip
20 arthroscopy did not cause significant improvement).

1 2. *Additional Assignments of Error*

2 Plaintiff challenges the ALJ's consideration of additional medical opinions
3 and Plaintiff's subjective symptom testimony. The ALJ's findings regarding other
4 medical opinions and Plaintiff's symptom testimony are similarly impacted by the
5 ALJ's selective interpretation of the longitudinal medical evidence. *See* Tr. 25-30.
6 Accordingly, the ALJ is instructed on remand to readdress the medical evidence
7 and Plaintiff's symptom testimony in a manner consistent with this opinion.

8 **B. Remand**

9 Plaintiff urges this Court to remand for an immediate award of benefits.
10 ECF No. 15 at 20. To do so, the Court must find that the record has been fully
11 developed and further administrative proceedings would not be useful. *Garrison*,
12 759 F.3d at 1019-20; *Varney v. Sec'y of Health and Human Servs.*, 859 F.2d 1396,
13 1399 (9th Cir. 1988). But where there are outstanding issues that must be resolved
14 before a determination can be made, and it is not clear from the record that the ALJ
15 would be required to find a claimant disabled if all the evidence were properly
16 evaluated, remand is appropriate. *See Benecke v. Barnhart*, 379 F.3d 587, 595-96
17 (9th Cir. 2004); *Harman v. Apfel*, 211 F.3d 1172, 1179-80 (9th Cir. 2000).

18 Here, it is not clear from the record that the ALJ would be required to find
19 Plaintiff disabled if all the evidence were properly evaluated. Even if the ALJ
20 were to fully credit Plaintiff's symptom testimony and the challenged medical

1 evidence, the evidence would still present outstanding conflicts for the ALJ to
2 resolve. Specifically, Dr. Hale opined Plaintiff could perform light work with
3 additional functional limitations, and the ALJ gave Dr. Hale's opinion significant
4 weight. Therefore, further proceedings are necessary for the ALJ to reconsider the
5 medical opinion evidence, including taking testimony from a medical expert. On
6 remand, the ALJ should also reconsider the credibility analysis. Finally, the ALJ
7 should reassess the RFC, and reconsider the remaining steps in the sequential
8 analysis.

9 CONCLUSION

10 Having reviewed the record and the ALJ's findings, this court concludes the
11 ALJ's decision is not supported by substantial evidence and free of harmful legal
12 error. Accordingly, **IT IS HEREBY ORDERED:**

- 13 1. Plaintiff's Motion for Summary Judgment, ECF No. 15, is GRANTED.
- 14 2. Defendant's Motion for Summary Judgment, ECF No. 23, is DENIED.
- 15 3. The Court enter JUDGMENT in favor of Plaintiff REVERSING and
16 REMANDING the matter to the Commissioner of Social Security for further
17 proceedings consistent with this recommendation pursuant to sentence four of 42
18 U.S.C. § 405(g).

19 The District Court Executive is directed to file this Order, provide copies to
20 counsel, and CLOSE THE FILE.

1 DATED August 20, 2018.

2 s/Mary K. Dimke

3 MARY K. DIMKE

4 UNITED STATES MAGISTRATE JUDGE